SCOPE OF TRADER'S ACT.

It would seem, from a careful study of § 2877 of the Virginia Code, and the corresponding and practically identical West Virginia Statute, ch. 100, § 13, together with the cases construing this provision, that perhaps it was intended to have a wider and more far reaching application than is commonly given to it by lawyers and business men. Perhaps it is not putting it too strongly to say that the assertion that this statute prevents the sale or transfer, to the prejudice of his creditors, by a merchant to whom it applies and who has failed to comply with its provisions, of his stock to an innocent third person, would be considered radical, and not meet with ready acceptance by the profession. And yet this is the conclusion to which this study of the statute has led, and which is now propounded, though with diffidence, i. e., that a trader under this act, who has not complied with it, can not sell his stock so as to defeat his creditors" claims, and this *independently* of the statute against the sale of a stock of goods as a whole. Such a case came recently under the writer's observation. A jobber had sold a large bill of goods to a merchant doing business as "Smith & Co.," say, without complying with § 2877. The goods went into stock, and subsequently the jobber, becoming uneasy, attached the stock of the merchant for his debt, only to find that the debtor had previously sold out to another party for an apparently valuable consideration. He was advised by his lawyer that his attachment could not be sustained, as fraud could not be proved, and that he was powerless to upset the transfer. So he dismissed his attachment and lost his debt, so far as these goods were concerned.

TERMS OF STATUTE

Section 2877 of the Virginia Code provides: "If any person transact business as a trader, w th the addition of the words 'factor,' 'agent,' 'and company,' or 'and co.,' and fail to disclose the name of his principal or partner, by a sign in letters easy to be read, placed conspicuously at the house wherein such business is transacted, and also by a notice published for two weeks in a newspaper (if any) printed in the city, town, or county wherein the same is transacted; or if any person transact such

business in his own name, without any such addition; all the property, stock, and choses in action acquired or used in such business shall, as to the creditors of any such person, be liable for the debts of such person." And the West Virginia Statute (ch. 100, § 13) is practically identical with it.

The first part of this statute "requires a person doing business as a trader, where his name is the only ostensible name, and the only indication of a partnership is the words 'and company,' or 'and co.,' to have such sign and make such advertisement." Though it does not require it in the case of an avowed partnership under a name disclosing a partnership and the full names of at least two partners. (Nat. Bank *v.* Cringan, 91 Va. 347, 362, 21 S. E. 820.)

The language of the statute is plain, explicit and imperative, as to the consequences of failure to comply with the provisions of the statute, for it makes *all the property,* stock and choses in action *acquired or used* in such business absolutely liable for such trader's debts, *whether contracted in the particular business or not* (italics mine). (Hoge *v.* Turner, 96 Va. 624; Edmunds *v.* Hobbie, etc., Co., 97 Va. 588. See, also, Partlow *v.* Lickliter, 100 Va. 631, 636, 42 S. E. 671; Morris *v.* Clifton Forge, etc., Co., 46 W. Va. 197, 32 S. E. 997.)

CLASSES OF PROPERTY INVOLVED

There may be at least three classes of property employed in such trader's business.

1. Property belonging always to the trader debtor.
2. Property belonging always to a third person.
3. Property which did belong to the trader debtor and was used in the business, but which has been transferred for value to another.

The first two classes of property are clearly liable under the statute and the decisions construing same, and I maintain that on reason and authority the third is equally liable. If it had remained the debtor's it would have been clearly liable; if it had never belonged to him, it would have been liable; then why should the mere sale to one, in whose hands it would have been liable, had he owned it all the time, prevent it from being liable? Especially where the situs of the property and the conditions of doing business are unchanged by the sale.

PURPOSE OF LEGISLATURE

"The purpose of the legislature in enacting the statute, as the title of the original act passed March 28, 1839, shows, was to prevent persons carrying on business under false or fictitious names and firms. The object was to prevent fraud; to compel any person transacting business as a trader to disclose the name of the real owner of the business, if any other there be; to prevent any shifting or evasion of ownership and liability for debts in case of controversy; and to preclude the assertion of secret claims of ownership against creditors of him who has conducted the business, possessed the property, and appeared to be its owner." (Hoge *v.* Turner, 96 Va. 624, 632, 36 S. E. 291; Edmunds *v.* Hobbie, etc., Co., 97 Va. 588, 591, 34 S. E. 472.)

"There is a consensus of opinion in the profession that the statute was intended to meet the common case of a person trading in his own name, either with or without the words 'agent,' or 'company,' and obtaining credit, presumably on the faith of the assets used in such business, and then, when the necessity arises, shielding those assets from the demands of his creditors by claiming that they belong to his principal or to his partner. The statute is aimed at the fraud which might be, and no doubt often was, practiced in this way, and it prevents the fraud by making the assets used or acquired in such business liable for the debts (all the debts) of such person, unless the name of his principal or partner be disclosed in the manner prescribed." (Nat. Bank *v.* Cringan, 91 Va. 347, 360, 21 S. E. 820.)

"There is as much, if not greater, reason for protecting creditors of a trader doing business in his own name from the secret claims of third parties as there is for protecting creditors of a person transacting business as a trader with the addition of the words 'factor,' 'agent,' 'and company,' or 'and co.,' who has failed to disclose his principal or partner in the manner provided by the statute. In the latter case the creditors know that they are dealing with one who does not claim to be the sole owner of the business, whilst in the former they have the right to believe that the trader is doing business entirely on his account, and is the sole owner of the goods in his possession." (Edmunds *v.* Hobbie Piano Co., 97 Va. 588, 591, 34 S. E. 482.)

KNOWLEDGE OR NOTICE OF REAL OWNERSHIP IMMATERIAL

It was held in Hoge *v.* Turner, 96 Va. 624, 32 S. E. 291, overruling Trevillian *v.* Powell, 1 Quar. Law J. 257, that the provisions of this statute relating to doing business as a trader, with the addition of "factor," "agent," etc., without disclosing the name of the principal, etc., apply without regard to knowledge by the creditor of the principal, if principal there be. Knowledge or want of knowledge does not affect the application of the statute, but is immaterial.

And in Partlow *v.* Lickliter, 100 Va. 631, 636, 42 S. E. 671, this principle is reiterated and applied to the case of a trader doing business in his own name. It is said there that "knowledge, or notice of ownership, actual or constructive, will not exempt the property from liability for debts of the party in possession anr conducting the business. To hold otherwise would be to engraft upon the statute an exception not warranted by the language, and tend to defeat its manifest object."

And in this case (Partlow *v.* Lickliter) we have a case so nearly affirmative of the principle maintained here, that it seems practically decisive of the question, when properly construed.

RECORDED BILL OF SALE INEFFECTUAL TO DEFEAT THIS STATUTORY LIABILITY OR LIEN

In Partlow *v.* Lickliter, 100 Va. 631, 633, 42 S. E. 671, an execution in favor of Ella F. Lickliter, on a judgment confessed in her favor, was levied on personal property in the possession and used in the business, of William F. Lickliter, the judgment debtor, her husband, but to which Fanny L. Partlow asserted title by virtue of a bill of sale executed by William F. Lickliter to her, and recorded prior to the confession of judgment in favor of his wife. Upon the petition of the officer, and in accordance with the provisions of § 2999 of the Code, the parties were convened for the determination of their conflicting rights and claims in respect to the property in controversy. The trial of the case was had before a jury upon the following issues directed by the court: "Whether or not, at the time the execution of Ella F. Lickliter against William F. Lickliter was levied upon the goods mentioned in the officer's return thereon, the said William F. Lickliter was transacting business as a trader, with the addition of the words 'factor,' 'agent,' 'and company'

or 'co.,' and failed to disclose the name of his principal or partner, as required by the statute; or if said William F. Lickliter transacted such business in his own name, without any such addition, and acquired or used said goods in said business." By their verdict the jury returned a negative response to the first inquiry submitted; but upon the second issue rendered the following verdict: We, the jury, find that William F. Lickliter did transact the business on Greenville avenue, in the city of Staunton, in his own name, as a trader, and was transacting such business in his own name at the time of the levy of the execution of Ella F. Lickliter, on the 17th day of December, 1901, and did acquire and use said property levied upon in said business." There was a motion on behalf of Fannie L. Partlow to set aside the verdict as contrary to the law and evidence, which motion the court overruled, and rendered judgment upon the verdict in accordance with the provisions of § 2998 of the Code.

It was held by the court of appeals, that the provisions of § 2877, in reference to the liability of a trader doing business in his own name, are not affected or qualified by § 2465 of the Code of Virginia as amended by acts of 1899-1900, p. 89, and that the "property, stock and choses in action acquired or used in such business" of said trader are liable for the payment of his debts, notwithstanding a bill of sale thereon may be recorded as provided by such section. The principle would seem of general application under § 2877. The case of Edmunds *v.* Hobbie Piano Co., 97 Va. 588, 34 S. E. 472, was approved and distinguished as follows: It is true in Edmunds *v.* Hobbie, etc., Co., 97 Va. 588, in describing the status of some of the property involved in that litigation, the fact is adverted to that it was consigned to the Hobbie Piano Company for sale under *written* contracts which were *not recorded.* But the liability of the property for the debts of the defendant company was not placed upon that ground, nor was the language there employed intended to overrule or modify the doctrine previously announced. (Partlow *v.* Lickliter, 100 Va. 631, 637, 42 S. E. 671.)

Section 2877 falls in a different category from the registry statutes. It is found in an independent chapter, which deals with a restricted class—partners, partnership associations, factors, agents, and traders—and was passed in the interest of trade and

commerce. It operates chiefly upon shifting stocks of goods, wares and merchandise, bought for the express purpose of daily indiscriminate sale, and constantly changing hands; property difficult of accurate description, and impossible of continued identification, through the medium of the registry laws. To undertake to apply those laws to that class of citizens, and to that species of property, if their enforcement were practicable, would operate as an embargo on trade. (Partlow *v.* Lickliter, 100 Va. 631, 635, 42 S. E. 671.)

The court said: "The question for decision is whether the second paragraph of § 2877 of the Code applies to a case in which the title of the owner of the property levied on is evidenced by a recorded bill of sale. The language of the provision is: 'Or if any person transact such business in his own name, without any such addition, all the property, stock, and choses in action acquired or used in such business shall, as to the creditors of any such person, be liable for the debts of such person.'" (Partlow *v.* Lickliter, 100 Va. 631, 42 S. E. 671, 672.)

MEANS OF PROTECTION AFFORDED BY STATUTE

"On the other hand, the section affords the true owner simple and effectual means of protecting his property (provisions which would be quite unnecessary if he is already protected by recording his title)." (Partlow *v.* Lickliter, 100 Va. 631, 636, 42 S. E. 671.)

CONSIGNED PROPERTY CONTRASTED WITH STORED

Again, in Edmunds *v.* Hobbie Piano Co., 97 Va. 588, 34 S. E. 472, it was held that personal property consigned to the trader under unrecorded written contracts, or left with him for sale, is property "used in such business," so as to be liable for the debts of such person; while stored property is not so liable.

In Barnes, etc., Co. *v.* Bloch, etc., Co., 38 W. Va. 158, 18 S. E. 483, 22 L. R. A. 850, certain property in the hands of a corporation for sale under an agency, was claimed to be subject to levy for the debts of such corporation, on the ground that it was acquired or used by such corporation transacting business as a trader in its own name. It was held that it was not so liable, on the ground, probably, that the corporation was not a "trader" within the meaning of W. Va. Code, ch. 100, § 13, as that was the argument advanced by the opposing counsel, citing

Brown Mfg. Co. *v.* Deering, 35 W. Va. 259, as authority. But Dent, J., in his opinion said that it was hardly worth while to notice this claim because the corporation did not do business as a trader, etc., within the meaning of the statute, but was doing business in its corporate name, and, while transacting other business, undertook to act as an agent for the consignor company, which fact was plainly painted upon the property in question. This seems hardly consistent with the other cases holding that a corporation is a person within the meaning of this statute, and that notice or knowledge of the real ownership is immaterial, when the statute is not complied with. The decision is no doubt correct on the ground that the corporation was not a "trader." The point is not noticed in the syllabus at all.

PURCHASER'S EQUITY

And now to look at the matter from the standpoint of the purchaser. How can he claim the rights of a bona fide purchaser, granting that he has paid an adequate price, without actual notice of any fraudulent purpose on the part of his vendor? He can not plead ignorance of the provisions and legal effect of § 2877. The fact that his vendor was doing business in such a way as to incur the liability imposed by that section, was known to, or ascertainable with ease by, him. In other words he must be held to have known that the goods he bought were liable to the debts of his vendor, however contracted. So much for his equity.

CONCLUSION

And so, where John Smith does business as a trader as "Smith and Co.," without complying with § 2877, and a merchant sells him goods on credit, dealing with John Smith, regarding and treating him as the apparent owner of the business, or the firm (with or without any notice or knowledge of the contrary), then all the property used in such business is liable for the debt so contracted (and any other valid debt of the trader, in fact), regardless of any sale or transfer by him, to any person, however innocent of intention to defraud or however valuable the consideration paid. In other words regardless of whom it belongs to.

This would seem to be undeniable where there was no change in the mode of transacting the business after the sale. Where

the actual and visible possession of the property passes to the purchaser, and *he* thereafter carries on the business as owner, or removes the property, it may be questionable whether the statute was intended to create a liability analogous to a lien which would then follow the property. But the wording of the statute is strong in declaring the property liable to all the debts of the vendor, as a sort of penalty for his breach of the statute, of which the purchaser must be held to have had notice, and Partlow *v.* Lickliter, at least *leans strongly* that way. Such an interpretation conforms to the spirit, and tends to effectuate the purpose, of the statute. Indeed, not to so interpret it, deprives it in large measure of its force to prevent fraud.

WHERE BUSINESS CONTINUED IN VENDOR'S NAME

Especially would this be true where the goods remained where they were; where the business went on under the same sign as before and without any change in the apparent management thereof after the alleged transfer. For, to look at the transaction in another light, suppose the sale accomplished, and effectual to pass an unencumbered title, free of the debts of the vendor. Then, if the business is continued in the same way by the vendor, even for one day, one hour, or one moment, without complying with the statute, the property is ipso facto liable, as being used or acquired in such business, for all the vendor's debts, even if it were not otherwise liable therefor.

REGARDLESS OF WHEN DEBT CONTRACTED

The goods of a third person used in the business are liable for the debts, regardless of when the debts were contracted (Edmunds *v.* Hobbie Piano Co., 97 Va. 586). Hence, what matters how such third person acquired title, whether by purchase from the trader or not; in either case they are liable?

REAL OWNER CONDUCTING BUSINESS

Of course, if a person claiming to be the true owner of the business and property could show that he conducted the business himself, in person, the statute, § 2877, would not apply. (Hoge *v.* Turner, 96 Va. 624, 634; Benjamin *v.* Hadden, 94 Va. 66, 70.) It is a question of fact and the burden of proof is on the creditor to show that the statute applies. (Hoge *v.* Turner, 96

Va. 624, 634; Benjamin *v.* Hadden, 94 Va. 66, 70; Penn *v.* Whitehead, 17 Gratt. 503, 523.)

EFFECT OF STATUTE AGAINST SALE OF STOCK OF GOODS AS A WHOLE

Va. Code, § 2460a (1904), repealing act of May 20, 1903, prohibits the sale of stock in bulk, without notice, etc., while indebted; but the question may still arise, as will readily be seen, both from transactions occurring before this statute, and from sales and transfers not falling within its scope.

The writer advances this perhaps novel interpretation of this important statute, with diffidence, and the hope that, if it is without justification in law and reason, some further light on the subject may be elicited, and the truth or fallacy of the argument established. See, also, Encyclopedic Digest of Va. & W. Va. Repts., vol. 10, pp. 826-830, where the cases under this statute are treated.

CASES UNDER THE MISSISSIPPI STATUTE

So far as the digests show, Mississippi is the only other state having a statute like ours and that of W. Va., but it is so nearly identical with ours that it must have been copied therefrom or from the same source. For the facts and holding in some of these cases, the original reports of which were inaccessible to the writer, the accurate digest paragraphs of the Century Digest are relied upon.

Code, 1880, § 1300, provides that, "if any person shall transact business as a trader or otherwise, with the addition of the words 'agent,' 'factor,' 'and company,' or 'and co.,' or like words, and fail to disclose the name of his principal or partner by a sign in letters easy to be read, placed conspicuously at the house where such business is transacted, or if any person shall transact business in his own name without any such addition," the property acquired or used in such business shall be liable in all respects for his individual debts. Bates *v.* Nuckols, 11 Southern Rep. 109. See present Code, § 4234.

"The object of § 1300 is to prevent fraud. The means it adopts to accomplish that is to require the conspicuous display, at his place of business, of a sign which shall plainly disclose the name of the true owner; otherwise the property used or acquired in the business shall be liable to the creditors of him who appears to the world to be owner; by dealing with it as owners

usually do. This law has regard to the external indicia of ownership, and by these stamps ownership on the property, to the extent of liability to the creditors of him who appears to be the owner. A sign which shall proclaim the real owner is required where one owns and another conducts the business, so that the public may be informed how matters are." (Mamblet *v.* Steen, 65 Miss. 474, 4 Southern Rep. 432.)

"The words 'in his own name, without any such addition,' are designed to meet the case of one who transacts business without any such addition, as is mentioned for illustration, and not in the name of some person other than himself, who is the real owner. Whoever transacts business without doing it in the name of another does it in his own name and character, necessarily. The statute does not mean that it shall be defeated by the easy disguise of a fictitious name, or a real name of one not the owner, or evaded by the artful dodge of not using any name at all. It proceeds on the assumption that, if one transacts business without doing it in the name of another, he does it in his own name, and it applies wherever one transacts business, not in the name of another, who is the true owner of the property employed." (Mamblet *v.* Steen, 65 Miss. 474, 4 Southern Rep. 433.)

SIGN MUST SHOW NAME OF TRUE OWNER

Under Code, 1880, § 1300, all the property used or acquired in any business is the property of him who transacts the business, and is liable for his debts, without regard to the sign under which the business is transacted, unless the name of the true owner of the property is indicated by a proper sign. (Loeb *v.* Morton, 63 Miss. 280 [1885].)

DATE OF DEBT AND KNOWLEDGE OF CREDITOR IMMATERIAL

Under Code, § 1300, providing that if one transacts business with the addition of "co." or "company" to his name, without disclosing, by a conspicuous sign, the names of his partners, or if one does business in his own name, without any addition, all the property used or acquired in the business shall be liable for his debts, it is immaterial whether the debts sought to be collected are antecedent or subsequent to the inauguration of the business, or whether creditors had actually been misled or

not. (Gumbel *v.* Koon, 59 Miss. 264; Quin *v.* Myles, 59 Miss. 375.)

TRANSACTION OF BUSINESS BY DEBTOR MUST BE SHOWN—IF SO LIABILITY ATTACHES.

In Bufkin *v.* Lyon, 68 Miss. 255, 10 So. Rep. 38, O. sold to W. a stock of goods, and put him in possession under a bill of sale. The business was carried on in the same store where O. had formerly conducted it in his own name. W. employed O. as clerk, and as such put him in possession. W. put up his sign after the sale to him, and it remained several days, when O. took it down, but no other sign was put up. Thereafter the goods were levied upon by plaintiffs as the goods of O. Held that, in the absence of anything else to show who was transacting the business, the goods were not subject to levy under Code Miss., § 1300, providing that, if any person shall transact business in his own name, all the property used or acquired in such business shall be liable for his debts.

"There is nothing to show that the goods were used or acquired by O. E. Bufkin in business transacted by him in his own name. He had owned the goods, it is true but had sold them, whereby they became the property of another, and as such were not liable for his debts, unless made so by section 1300; and they are not shown to have been, as already stated, because it is not shown that O. E. Bufkin transacted business in his own name, and used or acquired the goods in such business. In Wolf *v.* Kahn, 62 Miss. 814, 'the seller was in and about the store just as he had been when owner. He who had been up to that hour clerk then became owner. * * * The sign (of the former owner) remained over the door. His revenue and privilege licenses remained posted in the room. Lewis Kahn, the purchaser, who had been the clerk, and Max Kahn, the clerk, who had been the owner, were in and about the store just as they always had been. Every appearance that would lead to the belief on the part of the public that Max was transacting the business as before was presented, and nothing was done or said from which an inference could be drawn that he had retired from business, and his late clerk had embarked in it;' and these facts were held to make the goods liable to the creditors of Max Kahn, who acted as owner after the alleged sale, just

as he had done before. The case before us differs from that in several important particulars." (Bufkin *v.* Lyon, 68 Miss. 255, 10 So. Rep. 38.)

"This was not a sale by an employer to his clerk, and the purchaser put up a sign over the door with his name on it, which remained up until taken down by the clerk, and that is all that appears. The question is not how significant the facts would be on an issue, whether the sale was in good faith or not, but do they bring the case within the operation of § 1300?—and that is answered in the negative." (Bufkin *v.* Lyon, 68 Miss. 255, 10 So. Rep. 38.) It does not appear from the statement of facts whether the debt was contracted before the sale, or after.

Again, the lease of a stable building, the bill of sale of the personal property, and the license for conducting the business were taken in the name of a wife, who was the actual owner, and the books were kept and accounts against customers made out in her name. H., her husband, conducted the business personally superintending it, and was shown to have given two orders for the payment of dues to the stable proprietor, signing his own name to them. The stable was advertised in the village newspaper as "Carr Stable," managed by H. The only sign on the building was "Carr Stable." H. spoke of the business and property as his, a number of persons believing him to be the owner, while others were aware of the facts as to ownership. Held, that under Code Miss., § 1300, providing that "if any person shall transact business as a trader, or otherwise, with the addition of the words 'agent,' 'factor,' 'and company,' or 'and co.,' or like words, and fail to disclose the name of his principal or partner by a sign, in letters easy to be read, placed conspicuously at the house where such business is transacted, * * * all the property, stock, money, and choses in action used or acquired in such business shall, as to the creditors of any such person, be liable for his debts," etc., such sign was insufficient to save the rights of the wife, and that the property was liable for the debts of the husband. (Mamblet *v.* Steen, 65 Miss. 474, 4 Southern Rep. 431, Arnold, C. J., dissenting.)

HUSBAND DOING BUSINESS UNDER SURNAME AS WIFE'S AGENT.

The stock used in merchandising under the firm names of "H. & C.," the surnames only of two partners, of whom the

junior is a married woman, the business being conducted by her husband and the senior partner under partnership articles constituting the husband the wife's agent to manage her interest therein, is liable to the husband's creditors. (Evans *v.* Henley, 66 Miss. 148, 5 Southern Rep. 522.)

"Under the circumstances disclosed, the statute applies the name to the ostensible owner,—to him who transacts business,—unless the sign displayed 'discloses the name of his principal or partner in letters easy to be read.' Gumbel *v.* Koon, 59 Miss. 264; Wolf *v.* Kahn, 62 Miss. 814; Hamblett *v.* Stein, 65 Miss. 474, 4 South. Rep. 431." (Evans *v.* Henley, 66 Miss. 148, 5 South. Rep. 523.)

Again, D. H. claimed a stock of goods kept in a store on which the sign was "H. & Co.," and levied on under an execution against J. C. H. and wife, who composed the firm of J. C. H. & Co. D. H. had for years been doing business under the firm name of H. & Co., and claimed that the property was his. The store had been running five or six weeks before the levy, and J. C. H. was constantly in the store, and apparently in charge, and D. H. was never seen there. Held, that if the sign over the store was "H. & Co.," and J. C. H. was in the store, transacting the business, the verdict must be for execution plaintiffs, though D. H. owned the goods. (Head *v.* Haydock Carriage Co., 16 So. Rep. 420.)

The question involved in this case, viz., whether J. C. Head was transacting business under the sign of "Head & Co.," was fairly submitted to the jury, and that the verdict is supported by the evidence. (Head *v.* Haydock Carriage Co., 16 So. Rep. 420, citing Hamblett *v.* Steen, 65 Miss. 474, 4 So. Rep. 431; Evans *v.* Henley, 66 Miss. 148, 5 So. Rep. 522.)

PROPERTY RECEIVED FOR SALE

Under Code, 1892, § 4234, providing that all property acquired by any person transacting business in his own name shall, as to the creditors of such person, be liable for his debts, goods received by a firm doing business under the firm name, to be sold for another, are subject to attachment at instance of firm creditors. (Citizens' Bank *v.* Studebaker Mfg. Co., 71 Miss. 544, 14 So. Rep. 733.)

"The facts of this case do not distinguish it, in principle,

from that of Shannon *v.* Blum, 60 Miss. 828." (Citizens' Bank *v.* Studebaker Mfg. Co., 71 Miss. 544, 14 So. Rep. 733.) See also, Gumbel *v.* Koon, 59 Miss. 264, where cotton purchased in the usual course of business by a cotton buyer, who has an office for the transaction of business, and advertises for cotton under his own signature, was held subject to execution on a judgment rendered against him before the statute took effect, though owned by an undisclosed partner.

And property in a bar conducted under the sign "Empire Saloon" is liable to execution on a judgment against A., who conducted the business under a contract with the owner as his employee, under the firm name of A. & Co., in which name the license was obtained. (Quin *v.* Myles, 59 Miss. 375.)

STORED PROPERTY NOT LIABLE

It was held in Burwell *v.* Herron (Miss., 1904), 16 So. Rep. 356, following Cotton Gin Co. *v.* Berg, 65 Miss. 184, 3 So. Rep. 372, that property neither used nor acquired by a trader in his business, but merely stored with him by the owner, is not liable on execution against such trader under Code, § 4234.

TRANSFER TO PAY INDIVIDUAL DEBT VALID AGAINST FIRM CREDITORS

Where one member of a firm transacts the business in his own name, and there is no sign displayed at the place of business, disclosing the fact that another person has an interest therein, a bona fide transfer of the property acquired in such business, by the member transacting it, in payment of his individual debt, is valid, as against the creditors of the firm. (How *v.* Kerr, 69 Miss. 311, 13 So. Rep. 730; Miss., 1891.)

The uncontradicted evidence is that Kerr transacted the business in which he was engaged in his own name, and that no sign was displayed at the place, disclosing that Montgomery had any interest therein, and that the property in controversy was "used and acquired" in that business. Under these circumstances, such property is, by express provision of the statute, liable for the debts of the person so transacting the business, and to be "in all respects treated, in favor of his creditors, as his property." There is no doubt that Kerr was indebted to his mother and Rhodes in sums equal to the full value of the prop-

erty sold to them. The real contention of appellants is that it was not competent for them to accept the partnership assets in payment of their demands against J. J. Kerr individually. But the statute declares that, as to creditors, the property is to be treated as the property of Kerr. They might have subjected it to their demands by proceeding at law to judgment and execution, and what the law would have done it was permissible for the parties to do. (Howe *v.* Kerr, 69 Miss. 313, 13 So. Rep. 730.) This seems to lean strongly towards the construction of the statute contended for here.

Again G., trading as G. & Co., executed an assignment for his creditors generally, which was attacked by his individual creditors as fraudulent, who proceeded to attach; and the assignees paid their claims to an amount in excess of the proceeds of the assigned subject. Plaintiff recovered judgment against G. and one E., as G. & Co., and garnished the assignees, who answered that they had nothing, which was controverted. Held that, G. having failed to disclose the name of his partner, as required by Code, § 1300, the assignees properly applied the proceeds of the assigned subject to the payment of the attaching creditors who proceeded against G. alone, and that judgment was properly rendered for the garnishees. (Bates *v.* Nucklos, Miss., 1891, 11 Southern Rep. 109.)

"Without determining what would be the respective rights of attaching creditors under the circumstances shown in this cause, if there was no statute on the subject, it is sufficient to say that, since G. A. Nuckols confessedly transacted the business of his firm under the firm name and style of G. A. Nuckols & Co., the property used and acquired in such business was by virtue of § 1300 of the Code, to be treated as his individual property." (Bates *v.* Nuckols, 11 Southern Rep. 109.)

This seems a strong case for the construction contended for, as the assignees were *purchasers,* and if the trader could not *assign* to them for the benefit of his creditors generally, against the claims of his individual creditors claiming under the statute, neither could he *convey or sell* such property, directly, so as to defeat their claims.

JAS. FONTAINE MINOR.

Charlottesville, Va., May 24th, 1907.